

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FREDERICK J. CALATRELLO, Regional Director
of Region 8 of the National Labor Relations Board,
for and on behalf of the
NATIONAL LABOR RELATIONS BOARD,

Petitioner-Appellee,

V.

DHSC, LLC d/b/a
AFFINITY MEDICAL CENTER,

Respondent-Appellant.

No. 14-3309

**MOTION OF THE NATIONAL LABOR RELATIONS BOARD TO
DISMISS THE APPEAL AS MOOT WITH INSTRUCTIONS TO VACATE
TEMPORARY INJUNCTION**

Petitioner-Appellee National Labor Relations Board hereby moves to dismiss the instant appeal as moot and remand the case to the district court with instructions to vacate the injunction. The Court heard oral argument in this case on November 20, 2014. The grounds for this motion are as follows:

1. This is an appeal by DHSC, LLC d/b/a Affinity Medical Center, from an Order and Opinion of the United States District Court for the Northern District

of Ohio, granting a petition for a temporary injunction under § 10(j) of the National Labor Relations Act, 29 U.S.C. 160(j).

2. Section 10(j) authorizes district courts to grant temporary injunctions pending the resolution of unfair-labor-practice proceedings by the National Labor Relations Board.

3. On April 30, 2015, the Board issued its Decision and Order (Exhibit 1) on the underlying unfair-labor-practice complaint, finding the violations alleged by the Regional Director and enjoined by the district court (362 NLRB No. 78).

4. In view of the Board's final resolution of the administrative case, the temporary injunction at issue on appeal has expired by operation of law and the appeal is moot and should be dismissed. *Levine v. Fry Foods, Inc.*, 596 F.2d 719, 720 (6th Cir. 1979); *Lightner v. 1621 Route 22 W. Operating Co.*, 729 F.3d 235, 237–38 (3d Cir. 2013); *Barbour v. Central Cartage, Inc.*, 583 F.2d 335, 336–37 (7th Cir. 1978); *Kinney v. Federal Security, Inc.*, 272 F.3d 924, 925 (7th Cir. 2001); *Johansen v. Queen Mary Restaurant Corp.*, 522 F.2d 6, 7 (9th Cir. 1975).

5. In addition, the temporary injunction has no prospective effect on DHSC, LLC d/b/a Affinity Medical Center because the Board's April 30, 2015 order supersedes it. The mootness of the appeal prevents review of the district court order. Accordingly, the court's opinion and order should be vacated.

Barbour, 583 F.2d at 336–37 (citing *Sears, Roebuck & Co. v. Carpet Layers Union*, 397 U.S. 655, 658–59 (1970)); *Johansen*, 522 F.2d at 7.

6. Inasmuch as the appeal is moot, it is appropriate for each party to bear its own costs.

7. Counsel for DHSC, LLC d/b/a Affinity Medical Center has stated that she consents to this motion.

WHEREFORE, the Board respectfully requests that this Court dismiss the appeal as moot.

Respectfully submitted,

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Dated at Washington, D.C.
this 13th day of May, 2015

CERTIFICATE OF SERVICE

This is to certify that, on this date, pursuant to 6th Circuit Rule 25, the Appellee National Labor Relations Board served its MOTION TO DISMISS THE APPEAL AS MOOT electronically through the ECF System on Appellant's counsel.

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Dated at Washington, D.C.
this 13th day of May, 2015